



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 14

In re Application of :
Hideharu Ogawa : DECISION ON PETITION
Application No. 09/762,772 :
Filed: February 13, 2001 :
Attorney Docket No. 30394-2

This is a decision on the petition filed on August 22, 2003 by which petitioner requests withdrawal of the holding that the application stands abandoned for failure to timely file a proper reply to the final Office action dated November 27, 2002. The petition is being considered pursuant to 37 CFR 1.181, and no fee for the petition is required.

The petition is dismissed.


Petitioner alleges that a reply to the Office action in question was in fact timely filed on March 4, 2003, and that the response places the application in condition for allowance.

The reply to the Office action in question has been recently associated with the application file. The reply is entitled to a 37 CFR 1.8(a) certificate date of February 27, 2003, making the reply timely. However, under 37 CFR 1.113 and 1.116, only certain replies to a final Office action are considered to be a **proper** reply to a final rejection. Therefore, the reply has been forwarded to the examiner for consideration as to whether the reply filed on considered the reply filed on March 4, 2003 was proper under the above mentioned regulations. The examiner reports that the reply does not place the application in condition for allowance because the newly proposed limitations in claims 1, 2, 5 and 15 raise issues of indefiniteness. Further, the examiner reports that the newly added limitation that recites that the score management server transmits data representing the score of ... high-ranking players" is considered to be a new limitation that requires further search.

Petitioner was under an obligation, imposed by 37 CFR 1.113 and 1.116 to file a proper reply to the final within the meaning of these regulations. Petitioner had, therefore, a duty to monitor the status of the application and the reply that was filed, and to make inquiries as necessary regarding the reply and the application. Ultimately, even in the absence of any information regarding the reply, petitioner had a duty to file a timely reply that was in compliance with the regulations in order to forestall abandonment. In the absence of the filing a reply as required by 37 CFR 1.113 and 1.116, the application has been properly held to have become abandoned under 35 USC § 133 for failure to file a timely and proper reply to the final rejection.

For the foregoing reasons, it appears that there was no error on the part of the Office in holding that this application has become abandoned. It further appears that petitioner's remedy is to proceed pursuant to 37 CFR 1.137. However, petitioner is entitled to file a request for reconsideration of this decision, without fee, provided that such request is filed within two months of the date of this Decision. See 37 CFR 1.181(f).

PETITION DISMISSED


E. Rollins-Cross, Director
Technology Center 3700

Mitchell P. Brook
Lucie, Foreward, Hamilton & Scripps
11988 El Camino Real
Suite 200
San Diego, CA 92130